

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

COMMERCIAL PROPERTIES
ENTERPRISES, INC., COMMERCIAL
PROPERTIES, INC., JAC BERG FAMILY,
LP, ALLAN BERG FAMILY TRUST

Plaintiffs,

V.

GREAT LAKES INSURANCE
COMPANY

Defendant.

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CASE NO. 4:17-cv-861

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Defendant GREAT LAKES INSURANCE SE (incorrectly sued as Great Lakes Insurance Company), in a cause styled *Commercial Properties Enterprises, Inc., Commercial Properties, Inc., JAC Berg Family, LP, Allan Berg Family Trust v. Great Lakes Insurance Company*, originally pending as Cause No. 141-293414-17 in the 141st Judicial District Court of Tarrant County, Texas, hereby respectfully files this Notice of Removal of that cause to the United States District Court for the Northern District of Texas, Fort Worth Division, while fully reserving all rights and defenses, and as grounds therefore would respectfully show the Court as follows:

I. NATURE OF THE PENDING STATE CASE

1. On or about September 21, 2017, Plaintiffs Commercial Properties Enterprises, Inc., Commercial Properties, Inc., JAC Berg Family, LP, Allan Berg Family Trust (“Plaintiffs”) filed a civil action styled *Commercial Properties Enterprises, Inc., Commercial Properties, Inc., JAC Berg Family, LP, Allan Berg Family Trust v. Great Lakes Insurance Company*, under Cause

No. 141-293414-17 in the 141st Judicial District Court of Tarrant County, Texas.

2. This case is an insurance dispute wherein Plaintiffs allege in their Original Petition that their properties, located at 3400 South Watson Road, Arlington, Texas 76014 and 2501 East Mayfield Road, Arlington, Texas 76014, insured under an insurance policy issued by Defendant, sustained damage during a wind and hailstorm occurring on or about March 17, 2016. Plaintiffs further allege causes of action for negligence, breach of contract, violations of the Deceptive Trade Practices Act, violations of the Texas Insurance Code, and breach of the duty of good faith and fair dealing.

3. Defendant has attached the documents required to be filed with this Notice of Removal.¹

II. JURISDICTION

4. Pursuant to 28 U.S.C. § 1441(a), Defendant removes this action to the District Court of the United States for the Northern District of Texas, Fort Worth Division, because it is the District and Division embracing the place where such action is pending. In support thereof, Defendant would show that this action is between citizens of different states and the amount in controversy exceeds \$75,000.00.

A. Diversity of the Parties

5. The Secretary of State confirms that Plaintiffs, Commercial Properties Enterprises, Inc., Commercial Properties, Inc., and JAC Berg Family, LP are all citizens of Texas.² Allan Berg Family Trust is an unknown entity but, upon information and belief, and

¹ Plaintiff's Original Petition, attached hereto as Exhibit "A;" Proof of Service, attached hereto as Exhibit "B;" An Index of Matters Being Filed, attached hereto as Exhibit "C;" Copy of State Court Docket Sheet, attached hereto as Exhibit "C-1;" Copy of Process, attached hereto as Exhibit "C-2;" List of All Counsel of Record, attached hereto as Exhibit "C-3;" Civil Cover Sheet and Supplement, attached hereto as Exhibit "C-4;" and Certificate of Interested Parties, attached hereto as Exhibit "C-5."

² Respective certificates of formation, attached hereto as Exhibit "D."

based upon the insurance policies and the allegations in Plaintiffs' Original Petition, it is also likely a Texas based entity, or at least formed and operated in Texas and not in Germany.

6. Plaintiff's Original Petition confirms that Defendant is not a citizen of Texas. Additionally, Defendant is not even a citizen of the United States of America.³ Defendant is a foreign insurance company identified as a *Societas Europea* incorporated in Germany and registered with the commercial register of the local court of Munich under number HRB 230278. Defendant's registered office is at Königinstraße 107, 80802 Munich, Germany.

B. Amount in Controversy

7. As demonstrated herein by a preponderance of the evidence, it is apparent from Plaintiffs' pleading that the amount in controversy in this matter exceeds the jurisdictional minimum of \$75,000.00, exclusive of interest and costs. Plaintiffs specifically pleaded for monetary relief over \$1,000,000.00.⁴

8. Therefore, because Plaintiffs and Defendant are citizens of different states and, indeed, different countries, and because Plaintiffs seek to recover an amount exceeding \$75,000 exclusive of interest and costs, removal is proper under 28 U.S.C. § 1332(a).

III. TIMING OF REMOVAL

9. Defendant was served with this lawsuit on October 10, 2017 by serving Defendant's registered agent;⁵ therefore, this Notice of Removal is being filed within 30 days of service of the petition pursuant to 28 U.S.C. § 1446(b), and is filed less than one year after commencement of the action, pursuant to 28 U.S.C. § 1446(c).

10. This Notice is therefore timely filed.

IV. NOTICE TO ADVERSE PARTIES AND STATE COURT

³ Exhibit "A," at para. 5.

⁴ *See id.*, at para. 60.

⁵ *See* Exhibit "B."

11. As the removing parties, Defendant will give Plaintiffs prompt written notice of this Notice of Removal pursuant to 28 U.S.C. § 1446(d).

12. Defendant will also file a copy of this Notice of Removal with the 285th Judicial District Court of Tarrant County, Texas, where the state court action is currently pending, as required by 28 U.S.C. § 1446(d).

V. ANSWER

13. Defendant has not filed any responsive pleadings in the state court action, except the Notice of Removal as required by the Federal Rules of Civil Procedure. Defendant will file an Answer to Plaintiffs' lawsuit in this Honorable Court.

VI. JURY DEMAND

14. Defendant hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

VII. CONCLUSION AND PRAYER

15. In light of the foregoing, Defendant respectfully removes this civil action styled *Commercial Properties Enterprises, Inc., Commercial Properties, Inc., JAC Berg Family, LP, Allan Berg Family Trust v. Great Lakes Insurance Company*, originally pending as Cause No. 141-293414-17 in the 141st Judicial District Court of Tarrant County, Texas.

16. Defendant prays for such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted by,

/s/ Les Pickett
Les Pickett (Lead Counsel)
Federal I.D. No. 14306
State Bar No. 15980520

OF COUNSEL:

**GALLOWAY, JOHNSON, TOMPKINS,
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ATTORNEYS FOR DEFENDANT

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal has been served on the following via electronic service and/or facsimile on this 23rd day of October, 2017:

Derek L. Fadner
James M. McClenny
J. Zachary Moseley
411 N. Sam Houston Pwky E., Suite 200
Houston, Texas 77060

/s/ Les Pickett

Les Pickett